Howard Industries, Inc., Transformer Division *and* International Brotherhood of Electrical Workers, Local 1317. Case 15–CA–018637

March 23, 2015

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA AND HIROZAWA

On November 20, 2009, Administrative Law Judge George Carson II issued the attached supplemental decision.[1] The General Counsel filed exceptions and a supporting brief, and the Respondent filed an answering brief.[2]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel. The Board has considered the supplemental decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Supplemental Decision and Order. Specifically, we reverse the judge's dismissal of the allegation that the Respondent violated Section 8(a)(1) by threatening Union Steward James Chancellor with discipline for using notes while representing employee Dasmeon Caraway during an investigatory interview.

I. BACKGROUND

The Respondent manufactures electrical products, including transformers, at various locations. In early April 2008, Caraway failed to use a "breakdown pad" to prevent denting the transformer components on which he was working. On April 7, Caraway was directed to report to human resources for an investigatory interview, and he requested the presence of a union steward. Chancellor met with Caraway prior to the interview and took notes. Chancellor's notes suggest that Caraway was aware that the interview was related to his failure to use a breakdown pad. Chancellor, pursuant to his conversation with Caraway, wrote in his notebook, "I never was actually trained to do that job. I only filled in when he needed me. Im am (sic) actually a pay rate 17 – painter."

The investigatory interview was conducted by Human Resources Generalist Brant Stringer, a statutory supervisor. Stringer asked Caraway various questions about his failure to use the breakdown pad. During the interview, Chancellor raised his notebook, drawing Caraway's attention to his notes regarding Caraway's claimed lack of training. Caraway read aloud what was written. Stringer then told Chancellor to close the notebook. Chancellor refused, stating that he was using it "as a tool" to represent Caraway. Stringer then told Chancellor to "[g]et the notebook out of there before I suspend you." Chancellor then complied. Following the investigatory interview, Chancellor and Stringer spoke. Stringer assured Chancellor that using the notebook was not a problem, but that he "did not want the employees to use it as a script." Prior to this incident, Chancellor used his notebook in representing employees at other investigatory interviews, and he continued to do so afterwards.

II. THE JUDGE'S SUPPLEMENTAL DECISION

The judge dismissed the allegation that the threat of suspension violated Section 8(a)(1). He reasoned that, because this was an investigatory interview and not a grievance meeting, the Respondent could insist on hearing Caraway's own account of the matters being investigated. See *NLRB v. J. Weingarten,* 420 U.S. 251, 260 (1975). The judge emphasized that Chancellor was not threatened with discipline for taking or making notes, but for his refusal to stop using the notebook to provide Caraway with a prepared response.

III. DISCUSSION

Contrary to the judge, we find that the Respondent violated Section 8(a)(1) by threatening Chancellor with suspension for using his notes during the investigatory interview.

In *Weingarten*, supra, the Supreme Court held that an employee has a Section 7 right to the presence of a union representative at an investigatory interview that the employee reasonably believes may result in discipline. 420 U.S. at 260–263. At the same time, the employer is entitled to investigate an employee's alleged misconduct without interference from union officials and, further, is free to insist on hearing the employee's own account of the matter under investigation. Id. at 260. The role of the union representative under *Weingarten*, however, includes providing assistance and counsel to employees who may lack the ability to express themselves or who may be "too fearful or inarticulate . . . to raise extenuat-

[1] On October 22, 2009, the Board issued an unpublished Decision and Order severing and remanding to the judge a single allegation that the Respondent violated Sec. 8(a)(1) by threatening James Chancellor, an employee and union steward, with discipline for using notes while representing employee Dasmeon Caraway during an investigatory interview. (The Board affirmed an unfair labor practice finding regarding the Respondent's removal of another steward from the plant.) The Board directed the judge to prepare a supplemental decision containing credibility resolutions, findings of fact, and conclusions of law regarding whether the Respondent threatened Chancellor with suspension, and to explain the basis for his findings.

[2] The Respondent's filing was captioned as a Motion to Strike Exceptions, but the Board, by letter, subsequently notified the Respondent that it would consider the motion as an answering brief.

ing factors." Id. at 260–263 fn. 7. Accordingly, the union representative need not "sit silently like a mere observer"; he is entitled to give "active assistance" to the employee. *Washoe Medical Center*, 348 NLRB 361, 361 (2006) (quoting *Barnard College*, 340 NLRB 934, 935 (2003)).

Serving as an employee's *Weingarten* representative is protected union activity. *Murtis Taylor Human Services Systems*, 360 NLRB No. 66, slip op. at 2 (2014); *Corrections Corp. of America*, 347 NLRB 632, 636 (2006). In keeping with an employee's right to active *Weingarten* representation, the Board has held that a representative's conduct remains protected even when he interrupts the employer's questioning to ask clarifying questions[3] or advises the employee to refrain from answering certain questions until clarification is given.[4]

Here, we find that Chancellor's conduct during the interview was protected under the Act and that the Respondent's threat to discipline him was therefore unlawful. Similar to the conduct of the union steward in *Murtis Taylor*, Chancellor's use of the notebook provided clarification and counsel to Caraway by reminding him of his lack-of-training defense. And Caraway was entitled to have Chancellor remind him of his defense at that point in the interview, "when it [was] most useful to both employee and employer." See *Weingarten*, 420 U.S. at 262–263. Finally, as in *Murtis Taylor*, there is no evidence that Chancellor interfered with the integrity of the investigation or otherwise engaged in any activity that might have exceeded his permissible *Weingarten* role. The Respondent's threat to suspend him for his union steward activity therefore violated Section 8(a)(1).[5]

[3] *Postal Service*, 288 NLRB 864, 868 (1988).

[4] *Murtis Taylor*, supra, slip op. at 2–3.

[5] Our dissenting colleague is correct that an employer is free to insist on hearing the employee's own account. *Weingarten*, 420 U.S. at 260. However, Chancellor's conduct did not run afoul of that principle; Chancellor simply tried to "elicit[] favorable facts," id. at 263, by reminding Caraway of what Caraway had said to him in their preinterview meeting. Id. at 263. Because we find that Chancellor did not exceed the permissible bounds of *Weingarten* representation, we need not address whether the threat of suspension would have been lawful if he had done so.

Our colleague's reliance on *New Jersey Bell Telephone Co.*, 308 NLRB 277 (1992), is misplaced. There, the Board found that the respondent did not violate the Act by ejecting the *Weingarten* representative from the interview and, when he refused to leave the premises, causing his arrest and filing trespass charges against him. The Board expressly declined to pass on whether the Respondent lawfully threatened him with discipline for his conduct in the interview, because no such violation was alleged. Id. at 279 fn. 10.

CONCLUSIONS OF LAW

1. The Respondent, Howard Industries, Inc., Transformer Division, is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

(a) The Respondent has violated Section 8(a)(1) of the Act by threatening Union Steward Chancellor with discipline for using a notebook while representing employee Caraway during an investigatory interview, in violation of his rights under Section 7 of the Act.

3. The unfair labor practice committed by the Respondent affects commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in an unfair labor practice, we shall order it to cease and desist and to post a notice in a conspicuous place in its Laurel, Mississippi facility for 60 days.

ORDER

The National Labor Relations Board orders that the Respondent, Howard Industries, Inc., Transformer Division, Laurel, Mississippi, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with discipline for their union activity in providing assistance and counsel to a fellow employee at an investigatory interview that the employee reasonably believes might result in disciplinary action.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its facility in Laurel, Mississippi, copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site,

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 7, 2008.

(b) Within 21 days after service by the Region, file with the Regional Director for Region 15, a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 23, 2015

Mark Gaston Pearce, Chairman

Kent Y. Hirozawa Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER MISCIMARRA, dissenting.

In its decision in *NLRB v. J. Weingarten,* 420 U.S. 251 (1975), the Supreme Court upheld the Board's determination that an employee has a right, under Section 7 of the Act, to union representation at an investigatory interview the employee reasonably believes may result in discipline. The Court also held, however, that "exercise of the right may not interfere with legitimate employer prerogatives." Id. at 258. Among those prerogatives, said the Court, is that the employer "is free to insist that he is only interested, at that time, in hearing the employee's own account of the matter under investigation." Id. at 260. Contrary to my colleagues, I would find that the Respondent was lawfully exercising this prerogative when its agent, Brant Stringer, told Union Steward James Chancellor, who was holding up a notebook from which employee Dasmeon Caraway was reading aloud, to "[g]et the notebook out of there before I suspend you." Accordingly, I would affirm the judge's finding that the Respondent did not violate Section 8(a)(1).

The relevant facts, which are set forth in full in the judge's decision, are as follows. In early April 2008, Caraway failed to use a "breakdown pad" to prevent denting the transformer components on which he was working. The Respondent directed Caraway to report to human resources. Caraway requested a union steward, and Chancellor arrived to accompany him. Caraway and Chancellor both understood that the meeting was going to be an investigatory interview regarding Caraway's failure to use a breakdown pad. Prior to the meeting, Caraway spoke with Chancellor, and Chancellor wrote in his notebook, including the following statement: "I never was actually trained to do that job. I only filled in when he needed me. Im am [sic] actually a pay rate 17-painter."[1]

Human Resources Generalist Stringer, an admitted statutory supervisor, conducted the ensuing investigatory interview. Stringer asked Caraway various questions, including what the Respondent had told Caraway about using breakdown pads. At some point during the interview, Chancellor raised his notebook and tapped on it to draw Caraway's attention to the above-quoted statement. Caraway began to read aloud from Chancellor's notebook. Stringer told Chancellor to close the notebook. Chancellor refused and continued to hold the notebook so that Caraway could read from it. Stringer told Chancellor to "[g]et the notebook out of there before I suspend you[.]" Chancellor complied. After the interview, Stringer explained to Chancellor that using a notebook was not a problem, but that he "did not want the employees to use it as a script." Chancellor had used his notebook during investigatory interviews in the past, and he has continued to do so. The General Counsel alleged that the suspension threat violated the Act.

In his supplemental decision, the judge recognized that a union representative may not be prohibited from speaking or raising extenuating factors, but also that the employer is free to insist upon hearing the employee's own account of the matter under investigation. Applying these principles, the judge found that the Respondent lawfully insisted on hearing Caraway's own account of the matter under investigation, rather than the scripted version Caraway was reading aloud from Chancellor's notebook. The judge also found that the Respondent did not prohibit Chancellor from presenting whatever extenuating factors he wanted to present on Caraway's behalf. Accordingly, the judge found that the Respondent did not violate Section 8(a)(1), and he dismissed the complaint.

I would affirm the judge's supplemental decision. As the Supreme Court stated, a union representative at a *Weingarten* interview "is present to assist the employee, and may attempt to clarify the facts or suggest other em-

[1] The judge observed that whether this statement was actually true was immaterial because the complaint allegation relates to what occurred at the investigatory interview.

ployees who may have knowledge of them." 420 U.S. at 260. There is no question that it is protected conduct for a union representative to provide such assistance. See, e.g., *Corrections Corp. of America*, 347 NLRB 632, 636 (2006). At the same time, the Court also made it clear that a union representative does not have the right to interfere "with legitimate employer prerogatives." 420 U.S. at 258. Importantly, the Court—quoting from the Board's own brief—stated that the employer "is free to insist that he is only interested, at that time, in hearing the employee's own account of the matter under investigation." Id. at 260.

In my view, the Respondent's direction that Chancellor put away the notebook or risk suspension fell squarely within the *Weingarten* Court's holding that an employer is free to insist on hearing the employee's own account of the matter under investigation. Chancellor held up the notebook, tapped on it to draw Caraway's attention to it, and positioned it so that Caraway could read from it. Caraway proceeded to do so. Stringer reasonably concluded that Caraway was reciting from a "script" written by Chancellor instead of providing his own account of the matter under investigation. Stringer was free to insist, at that time, on hearing Caraway's own account in his own words. Acting on that prerogative, Stringer told Chancellor to close the notebook. Chancellor refused. Stringer then enforced the Respondent's prerogative by threatening Chancellor with suspension if he persisted in his refusal. Respondent did not violate Section 8(a)(1) by doing so. See *New Jersey Bell Telephone Co.*, 308 NLRB 277, 278–280 (1992) (finding that employer acted lawfully toward *Weingarten* representative who exceeded his permissible role when it ejected him from the interview, directed him to leave the premises, and, on his refusal to do so, caused his arrest and filed criminal trespass charges against him).[2] As the judge found, the Respondent did not prohibit Chancellor from presenting whatever extenuating factors he wanted to present on Caraway's behalf. Moreover, as Stringer explained to Chancellor after the interview, Chancellor was free to use his notebook in *Weingarten* meetings (as he had done before and continues to do), but he could not use it to provide employees with a script during the interview.

My colleagues find that Chancellor's conduct during the interview was protected. They contend that Chancellor was providing permissible "clarification and counsel" to Caraway, and they analogize his conduct to that of a union representative who asks clarifying questions or advises an employee to refrain from answering certain questions until clarification is given. I find their analysis unpersuasive. Chancellor did neither of these things. He held up a notebook, tapped it to direct Caraway's attention to it, and positioned it so that Caraway could read aloud from it, which Caraway proceeded to do. Stringer reasonably concluded that he was not getting Caraway's account in his own words, and he was entitled to insist on getting Caraway's account in his own words. Stringer asked Chancellor to desist, and Chancellor refused. Chancellor's conduct went beyond providing Caraway with "clarification and counsel" as permitted under extant Board law.

Although *Weingarten* meetings lack the formality of Board hearings and other legal proceedings, it is clear that no factfinder or adjudicator would ever permit a representative to "assist" a witness by holding a notebook from which the witness would read aloud his or her description of relevant events. Cf. *U.S. v. Ellisor*, 522 F.3d 1255, 1276 (11th Cir. 2008) (potential obstruction-of-justice charge enhancement where defendant was "surreptitiously referring to a sheaf of notes while testifying"). It is obvious that the Supreme Court itself would denounce such actions by a *Weingarten* representative, given the Court's statement in *Weingarten* that any manager conducting an interview may "*insist* that he is only interested . . . in hearing *the employee's* own account of the matter under investigation." 420 U.S. at 260 (emphasis added).

Murtis Taylor Human Services Systems, 360 NLRB No. 66 (2014), upon which the majority principally relies, is distinguishable from the present case. In *Murtis Taylor*, the employer "never explained the allegations being investigated," and the Board found that the steward's interruptions and objections were "attempts to clarify the issues being investigated." Id., slip op. at 2.[3] Here, by contrast, Chancellor did not seek to clarify the allegations against Caraway. Chancellor and Caraway both understood that the interview concerned Caraway's failure to use a breakdown pad to prevent denting the transformer components on which he was working. Rather, Chancellor directed Caraway's attention to Chancellor's notebook, from which Caraway then read aloud as from a script, and Chancellor refused to close the note-

[2] I disagree with my colleagues that my reliance on *New Jersey Bell Telephone* is "misplaced." As indicated in the text, the Board there found that an employer did not violate the Act when it caused an employee *to be arrested*, and then *filed criminal trespass charges against the employee*, when the employee exceeded his permissible role as *Weingarten* representative. Under any reasonable interpretation, *New Jersey Bell Telephone* supports a finding that the Respondent here did not violate the Act by merely threatening discipline when Chancellor exceeded the permissible scope of his *Weingarten* role.

[3] I did not participate in *Murtis Taylor*, and I express no views on the merits of that decision.

book when Stringer asked him to. As explained above, Chancellor's conduct interfered with the Respondent's prerogatives under *Weingarten* and thus exceeded the scope of a union representative's protected role.

As the Board has previously observed, the Supreme Court in *Weingarten* struck a careful balance "between the right of an employer to investigate the conduct of its employees at a personal interview, and the role to be played by the union representative present at such an interview . . . ." *New Jersey Bell Telephone*, 308 NLRB at 279. For the reasons set forth above, I believe the judge struck the correct balance in this case, and my colleagues have not. Accordingly, I respectfully dissent.

Dated, Washington, D.C. March 23, 2015

Philip A. Miscimarra, Member

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT threaten you with discipline for your union activity in providing assistance and counsel to a fellow employee at an investigatory interview that the employee reasonably believes might result in disciplinary action.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights set forth above.

HOWARD INDUSTRIES, INC., TRANSFORMER DIVISION

The Board's decision can be found at www.nlrb.gov/case/15-CA-018637 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

Joseph A. Hoffman, Jr., and *Shelly C. Skinner, Esqs.,* for the General Counsel.
Elmer E. White III, Esq., for the Respondent.
Roger K. Doolittle, Esq., for the Charging Party.

SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

GEORGE CARSON II, Administrative Law Judge. This case was tried in Laurel, Mississippi, on July 6, 2009, pursuant to a consolidated complaint that issued on December 22, 2008. On July 28, 2009, I issued a bench decision in which I found, in Case 15–CA–018772, that the Respondent violated the Act by removing Union Steward Gregory Jones from the plant. I found, in Case 15–CA–018637, that the Respondent did not violate the Act by threatening Union Steward James Chancellor with discipline for using notes while representing an employee, and I recommended that the foregoing complaint allegation be dismissed.

The Board, in an unpublished Order dated October 22, 2009, in the absence of exceptions, affirmed my finding regarding the removal of Union Steward Jones and severed Case 15–CA–018637 from Case 15–CA–018637. The Board remanded Case 15–CA–018637 to me directing that I reconsider the record evidence, make credibility determinations, and explain the basis for my findings. The Board expressed no opinion as the correctness of my initial disposition of the complaint allegation.

The alleged violation occurred in the course of an investigative interview with employee Dasmeon Caraway, who was employed as a painter by the Respondent. In my bench decision, I found it unnecessary to resolve the varying accounts of the interview insofar as I found that any threat to Chancellor "was not for using notes while representing . . . [an] employee, . . . [but for] showing notes to Mr. Caraway and having him read his response in the investigation." Consistent with the Board's Order, I shall reconsider the record evidence, make credibility determinations, and explain the basis for my findings.

In early April 2008, employee Caraway failed to use a "breakdown pad" which the Company uses to prevent denting

transformer components. On April 7, 2008, he was directed to report to human resources. He requested the presence of a union steward. Union Steward James Chancellor came to accompany him. Prior to what both understood was to be an investigatory interview, Chancellor spoke with Caraway. Although employee Caraway told Chancellor that he was unsure why he had been sent to human resources, the notes taken by Union Steward Chancellor prior to the interview suggest that employee Caraway was aware that the upcoming interview related his failure to use a "breakdown pad." Chancellor, pursuant to his conversation with Caraway, wrote in his notebook, "I never was actually trained to do that job. I only filled in when he needed me. I'm actually a pay rate 17-painter." Whether the foregoing was true is immaterial. The complaint allegation relates to what occurred at the investigatory interview.

The investigatory interview was conducted by Human Resources Generalist Brant Stringer, an admitted supervisor. Stringer, Chancellor, Caraway, and Rufus McGill, Caraway's supervisor, were present. Stringer asked Caraway various questions including what he had been told regarding when breakdown pads should be used. Supervisor McGill did not testify.

Steward Chancellor recalls that, near the middle of the interview, he raised his notebook and tapped upon it, drawing the attention of employee Caraway to the written comment thereon relating to lack of training. He recalled that Caraway glanced at what was written and then asked Generalist Stringer how he could "receive a warning letter for a job that he was never trained on." According to Chancellor, Generalist Stringer told him to close the notebook or he would be suspended. Chancellor refused to close the notebook, stating that he needed the notebook "as a tool" to represent the employee. Upon Chancellor's refusal, Stringer repeated his directive that he close the notebook or he would be suspended. He then told Chancellor to place the notebook outside of the office, and Chancellor did so.

Employee Caraway only partially corroborated the testimony of Chancellor. He recalled that it was near the end of the meeting that Chancellor called his attention to the entry in the notebook relating to a lack of training. He admitted that he "started reading off of it." Stringer told Chancellor to "get the notebook out of there." Chancellor refused, stating "that was our defense," referring to the alleged lack of training. Stringer repeated his direction, this time telling Chancellor to "[g]et the notebook out of there before I suspend you." Chancellor did so.

Stringer testified that, near the end of the meeting, he observed Chancellor hold up his notebook in front of Caraway and that Caraway appeared to be reading what was written. Stringer recalled that he told Caraway "not to do that," because he wanted Caraway to respond "in his own words." Chancellor refused, stating that he would not remove the notebook "from how he was holding it in front of Mr. Caraway." Following Chancellor's refusal to remove the notebook from in front of Caraway, Stringer repeated his direction that Chancellor remove the notebook. He admitted stating to Chancellor that if he did not put the notebook away that he would be "refusing to follow instructions." At that point, Chancellor complied. Stringer denied making any threat relating to suspension or any other form of discipline.

Chancellor and Stringer agree that, immediately following the investigatory interview, they spoke together. Chancellor acknowledges that Stringer informed him that his using a notebook was not a problem, but that he "did not want the employees to use it as a script." Prior to April 7, 2008, Union Steward Chancellor had carried and utilized his notebook during meetings at which he was representing employees, and he has continued to do so.

In assessing the foregoing evidence I find, consistent with the mutually corroborative testimony of Union Steward Chancellor and Caraway, that Stringer did threaten Chancellor with suspension. As already noted, Supervisor McGill did not testify.

I do not credit Chancellor's testimony that Stringer, when first directing him to close the notebook, threatened suspension. There would have been no need for any threat of discipline if Chancellor had complied with Stringer's initial directive. Consistent with the testimony of Caraway, I find that, near the end of the interview, Stringer told Chancellor to "[g]et the notebook out of there before I suspend you" after Chancellor refused to close the notebook and had continued to hold the notebook so that Caraway could see it and read what was written.

I further find, consistent Stringer's observation of Caraway and the admission of Caraway, that Caraway was "reading off of" the notebook.

This was an investigatory interview, not a grievance meeting. Although a union steward may not be prohibited from speaking or presenting "extenuating factors" in an investigatory interview, an employer "is free to insist . . . [upon] hearing the employee's own account of the matter under investigation." See *Postal Service*, 351 NLRB 1226, 1227 (2007).

Stringer did not request that Chancellor show him the notebook, thus he was unaware that Caraway's recitation relating to lack of training was complete at the point that he directed Chancellor to close his notebook. Chancellor refused to close the notebook that he was using to prompt Caraway. He did not state that he needed to make, take, or personally use notes. He stated that he was using the notebook "as a tool" which, in the context of the interview, was consistent with Stringer's conclusion that Chancellor was providing Caraway with a script.

Stringer observed that Caraway appeared to be reading, and Caraway admitted that he was reading. So far as Stringer knew, there was additional script to be read, and Chancellor did not state otherwise. Stringer sought to have Caraway respond in his own words rather than read from a script. The threat followed the refusal of Chancellor to close the notebook which was being used "as a tool" to provide Caraway with a script in the investigatory interview. It did not relate to Chancellor's making or taking notes in his capacity as a union steward. See *Postal Service*, 350 NLRB 441, 465 (2007). Chancellor used his notebook prior to April 7, 2008, and has continued to do so since that date.

The complaint alleges that an employee was threatened with discipline "for using notes while representing other employees." Chancellor was not prohibited from taking or making notes. The threat of suspension was made after Chancellor re-

fused to close the notebook and continued to hold the notebook so that Caraway could see it and read his response.

The Respondent did not prohibit the Union from presenting whatever extenuating factors it desired to present on behalf of employee Caraway. Stringer sought to stop Caraway from reading. An employer may properly insist upon hearing "the employee's own account of the matter under investigation." *Postal Service*, 351 NLRB at 1226. Immediately after the conclusion of the investigatory interview, Stringer assured Chancellor that his using a notebook was not a problem, but that he "did not want the employees to use it as a script." Chancellor has continued to use his notebook in meetings in which he has represented employees. Chancellor's refusal to close the notebook while stating that he was using the notebook "as a tool" suggested that further scripted recitation by Caraway was to follow. The threat of discipline following the refusal of Chancellor to close the notebook that he was using to provide employee Caraway with a scripted response did not violate the Act.

Having reconsidered the record evidence, made credibility determinations, and explained the basis for my findings, I reaffirm my initial decision that the Respondent did not violate the Act by threatening employees with discipline for using notes while representing other employees during investigatory interviews. Insofar as the foregoing allegation is the only allegation predicated upon the charge in Case 15–CA–018637, which as been severed, I shall recommend that the complaint be dismissed.

CONCLUSIONS OF LAW

The Respondent did not violate the National Labor Relations Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[1]

ORDER

The complaint is dismissed.

Dated, Washington, D.C., November 20, 2009.

[1] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.